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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

September 11, 1996

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BY HAND

Mr. William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554

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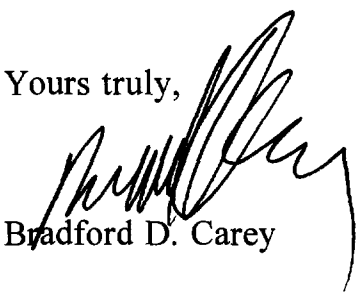
RE: In the Matter of Amendment of
Section 73.3526(d) of the Commission's Rules
RM-8857
Comments of Hardy & Carey, L.L.P. in Support
of Proposed Amendments

Dear Mr. Caton:

Enclosed please find the original and four (4) copies of Comments of Hardy & Carey, L.L.P. in Support of Proposed Amendments for filing with the Commission in connection with the above-captioned.

If you should have any questions regarding this matter, kindly direct them to the undersigned.

Yours truly,


Bradford D. Carey

BDC/mv
Enclosures

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**FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY**

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of

**Amendment of Section 73.3526(d)
of the Commission's Rules**

RM-8857

MM Docket No. _____

**To: Chief,
Policy & Rules Division**

**Comments of
Hardy & Carey, L.L.P.
In Support
of Proposed Amendments**

September 9, 1996

**Ashton R. Hardy
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Summary

The Commission's rules requiring a broadcast station to maintain its Public Inspection File in the station's community of license place harsh and unnecessary burdens on the public and station licensees. The current public file location rules are nonsensical given the deregulation and rapid ownership changes in the broadcast markets. Recent expansion of station ownership limits has sparked a wave of station sales, with ownership of several stations often consolidated under one individual or company, as was intended by Congress when it adopted the Telecommunications Act of 1996. With increasing frequency, multi-station owners co-locate the actual broadcast operations of two or more stations for more effective resource management. The Commission's current public file location rule has not kept pace with this permissible and popular practice; creating a confusing maze for an individual wishing to review or copy items from the public file of a particular station or various stations of a particular owner. This result is in direct conflict with the primary goal of the public file location rule -- accessibility. In addition to confusing the public, station owners encounter complex logistical and monetary roadblocks to maintaining public inspection files in each station's community of license. From the critical vantage point of accessibility, maintaining a station's public file at the main studio of each station, regardless of whether the main studio is located within the station's community of license, is a more practical solution which will serve the public and accomplish the original intent of the rules.

The primary rule cited for consideration in various petitions for rulemaking has been 73.3526(d), which sets forth the public file location requirement for commercial

stations. However, the justifications offered in these petitions for change of the commercial station public file location rule apply equally to noncommercial stations, whose identical public file location requirement is set forth at 73.3527(d). Accordingly, we request that the Commission consider simultaneously changing the noncommercial public file location rule in the ongoing proceedings.

I. The current public file location rule is grossly out of sync with the realities of broadcast station ownership.

The public file location rules for commercial and noncommercial stations, which have remained unchanged for well over a decade, have not kept pace with the whirlwind ownership changes in the broadcast world. The recent relaxation of the Commission's ownership rules to permit a single entity or individual to own more stations in a single market has sparked a fundamental shift in station ownership and operation. The new rules are part of an overall strategy designed to promote market-based competition, which in turn will better serve the public by creating a greater diversity of programming and sparking the construction of additional broadcast stations.

Accordingly, in today's newly competitive broadcast market, multi-station owners are increasingly forced to consolidate broadcast operations, sales efforts, and facilities to attain and keep a competitive edge and remain economically viable. The Commission's rules assist in this regard, permitting owners to consolidate the broadcast operations of several stations at one centralized studio, as long as that studio is within the principal community contour of each station. Notwithstanding this

common and growing practice, owners remain subject to the Commission's rules at sections 73.3526(d) and 73.3527(d), which require commercial and noncommercial station licensees to maintain public files in each station's respective community of license. Retaining such an archaic requirement effectively limits the public's access to the public records of a station. Furthermore, station owners must bear the expense and inconvenience of maintaining a separate public file.

a. Public access to station records is restricted under the current rule.

A confusing array of stations, owners, and public file locations await the typical individual or entity wishing to inspect the public file of one or more broadcast stations. The current outdated public file location rule does nothing to remedy this confusion but instead contributes to it by mandating a trial and error approach for accessing a station's public file in the typical broadcast market. The professed goals of the public file location rule -- accessibility and meaningful public participation in the licensing process -- are rapidly becoming unachievable in today's dynamic broadcast market.

The public is not routinely informed by the station, the Commission or any other entity of the location of a station's public file. A person wishing to inspect a station's public file inevitably consults a phone or other local directory to determine the location of the station, and reasonably assumes that the location of broadcast operations is the location of the public file. In today's changing broadcast station markets, a concerned citizen, upon arriving at a station's main studio, is frequently faced with the following unpleasant scenario:

Owner owns three stations (A, B and C), each of which are licensed to different, but nearby communities. Pursuant to the Commission's rules, Owner can locate each station's main studio anywhere within each station's respective principal community contour. Because of the relative proximity of the three communities to one another and the strength of station signals, the principal contours of the three stations overlap such that broadcast operations may be, and are conducted from one central location which rests within the principal community contour of all three stations. This central location is, respectively, 10, 20 and 25 miles from stations A, B, and C's individual communities of license. In accordance with the current public file location rule, the owner maintains the public file for station A at a public library in the station's community of license. Twenty miles away from the broadcast studio, Station B's public file is kept at the business place of an acquaintance. Station C's public file is maintained at an attorney's office in the station's community of license, 25 miles away from the station's broadcast operation.

If such an individual is interested in obtaining information about the general hiring practices of the station's owner in this scenario, he or she must bear the burden of visiting all three communities. A similar lengthy and burdensome trip would be necessary for a political candidate to review the political file of the owner's individual stations, for whatever reason she might do so. Given that most requests for public file review and copying originate from individuals or entities inquiring into equal employment records or political candidate records, the considerable obstacles to information access are magnified in the very areas where access is most critical.

In larger broadcast markets, the problem may be even worse. A multi-station licensee may have some stations with studios in their respective communities of license, and therefore maintains public files at those studios. The same licensee may operate consolidated broadcast operations at a main studio for two or three other

stations, whose communities of license are distant from the studio. The public files for these stations are therefore scattered to the appropriate communities of license.

Thus, to the typical uninformed member of the public, gaining access to public files becomes a daunting and frustrating campaign, and discourages access. By complying with the rule, owners inevitably make accessing public files more difficult. The result is limited access and less participation in the licensing process -- in direct conflict with the rules' stated purposes. In contrast, by permitting a station owner to maintain the public file at its main studio, regardless of the studio's location, a less confused public will once again have a realistic opportunity to readily access files and participate in the licensing process of broadcast stations.

b. The public file location requirements needlessly burden broadcast station owners.

In addition to unnecessarily confusing the public, the current public file location rule forces broadcast station owners, particularly multi-station licensees, to engage in a pointless yet expensive and time-consuming balancing act which is not consistent with the Commission's stated commitment to public access. To comply with the current public file rule, the owner in the above scenario is forced to embark on a convoluted and nonsensical campaign to establish and maintain a station's public file.

Often, the broadcast station owner whose broadcast operation is outside appropriate communities of license first consults with legal counsel to confirm that the current rule actually means that the public file cannot be maintained at the main studio but must be set up within the community of license. Typical inquiries involve the appropriate locations for the file, manning requirements, copying requirements, hours

of operation and updating time restraints. Having confirmed the requirement, the station owner endeavors to comply with the rule.

Subsequently, the owner must spend time and money making arrangements with acquaintances or appropriately accessed public locations to set up the public file. Assurances of hours of operation and compliance with the rules governing access to the file must be obtained. Arrangements for copying must be considered and provided. Appropriate hours of operation must be guaranteed. More than one location might need to be considered based on the availability or feasibility of some non-broadcast entity meeting the Commission's requirements. Once these issues are resolved, procedures must be put in place to assure the public file is kept up to date. This requirement may be difficult during peak periods, such as election season, where frequent filings are necessary for political candidate rates and requests. Periodic checks on the content of the file and access procedures are a station owner's only assurances of compliance with the Commissions requirements.

Ironically, all of this effort is made to comply with a public file location rule which often does not permit the public ready access or meaningful participation in Commission licensing proceedings. Such an exercise in futility thus costs many owners time and money, without a concurrent benefit to the public. Notwithstanding this alarming result, the Commission's public file location rule remains inflexible and static. The simple remedy of allowing stations to maintain their public files at their main studios, regardless of whether that studio is within the station's community of

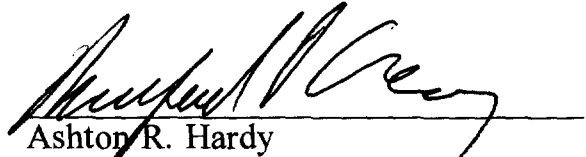
license, is a much more balanced approach, and removes unnecessary burdens from owners.

Conclusion

Hardy & Carey submits that the current public file location requirements are rapidly becoming an impediment to any public participation in broadcast licensing.

IN VIEW OF THE ABOVE, Hardy & Carey, L.L.P. urge amendment of Sections 73.3526(d) and 73.3527(d) of the Commission's rules to require station licensees to maintain the public file at the station's main studio wherever located or within the station's community of license.

Respectfully submitted:



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